

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

PLAN FOR RANDOM JURY SELECTION

Pursuant to the Jury Selection and Service Act of 1968 (Public Law 90-274) as amended, the plan for the random selection and service of grand and petit jurors in the United States District Court for the District of North Dakota and the separate divisions thereof is hereby amended and adopted by this Court, subject to approval by the designated reviewing panel of the Eighth Circuit and to such rules and regulations as may from time to time be adopted by the Judicial Conference of the United States.

It is the purpose of this plan to implement the policies of the United States declared in Section 1861 of Title 28, United States Code,

that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes,

that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and

that all citizens shall have an obligation to serve as jurors when summoned for that purpose.

It is further the purpose of this plan to implement the prohibition against discrimination contained in 28 USC 1862, which provides that no citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

1. APPLICATION AND MANAGEMENT. The provisions of this plan apply with equal force and effect to each of the four divisions of this District. The Clerk of this Court is hereby authorized and directed to manage the jury selection process. For purposes of this plan, the term "clerk" is meant to

include the clerk of this court, any authorized deputy, and any other person authorized by the court to assist the clerk in the performance of functions under this plan.

2. SOURCE OF NAMES. The general election fixed by North Dakota statute for the first Tuesday after the first Monday in November of each presidential election year is an election in which statewide voting for state and federal offices occurs. The list of actual voters at such election in each voting precinct is filed with and is an official record of the county auditor of the county of which such precinct is a part. Copies of such lists shall be procured from the various county auditors by the clerk by June 1, if possible, of the year following each of such elections. The lists of actual voters so obtained from all the counties comprising each of the divisions of this district shall be the source of names of prospective grand and petit jurors for service in such respective division, and random selection shall be made therefrom. However, if the county auditor shall refuse, neglect or fail to furnish a copy of the list of actual voters to the clerk by June 1 of the year following the presidential election, then the source of names of prospective grand and petit jurors for service from that county shall be the original list thereof on file in the office of such county auditor and random selection of names may be made in the office of such county auditor by the clerk.

The clerk is authorized to use personnel of the county board of elections or county auditors' offices to perform random selection, transcribe the names and addresses according to the selection formula described in this plan and certify same to the clerk.

3. PROCEDURE FOR SELECTION FROM ACTUAL VOTER LISTS

a. At the clerk's option, and after consultation with the court, the selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a purely randomized process through routines approved by the National Institute of Standards and

Technology (NIST). Such random selection of names from the source list for inclusion in the master wheel by data computer personnel must insure that each county within the jury division is substantially proportionally represented in the master jury wheel in accordance with 28 USC 1863(b)(3). The selection of names from the source list must also insure that the mathematical odds of any single name being picked are substantially equal; or

b. A method of random selection of names uniformly applied to the lists of actual voters of all counties assigned to each master wheel, as set out in paragraph 4, will insure substantial proportional representation in the wheel and will reflect a fair cross section of the persons residing in each county. Random selection of names may be accomplished by using the following method:

i. Determining a Quotient. After ascertaining the total number of actual voters for all counties within each division, divide that number by the number of names needed for the jury wheel. The result is referred to herein as the quotient. The quotient is the ratio of selected to unselected names. For example, if it is determined that to supply court jury requirements for four years 10,000 names will be needed in the master jury wheel and if there is a total of 200,000 names on all the county voter lists within the division, the quotient would be 20 (200,000 total names divided by 10,000 names) and every 20th voter name should be placed in the master jury wheel.

ii. Determining a Starting Number. After determining the quotient, the clerk shall establish a starting number which will locate on the voter list the first name to be selected. The starting number will be manually drawn from numbered slips. The slips used for the drawing should begin with a slip numbered 1 and end with a slip numbered the same as the quotient. As an example of how the quotient and starting number are used, if we assume the quotient to be 20 and the starting number to be 8, the first name chosen from each county would be the 8th name on the voter list, the second name

would be the 28th, the third name would be the 48th, etc. to the end of the list. County auditors will be instructed to use the voting list for the entire county, to arrange the precincts in numerical order and to use the starting number only once. The clerk shall prepare a certificate as to the starting number which shall become a part of the jury record.

c. The judges of the court find that electronic data processing methods can be advantageously used for selecting and copying the names from the voter lists of larger counties that maintain their lists in machine readable forms. It is further found that because some counties maintain their voter lists in handwritten or printed form it may be advantageous to employ a combination of methods whereby names are initially selected from the voter list manually and then recorded in machine readable form for handling and copying of names by electronic machine methods.

Therefore, a properly programmed electronic data processing system or combination system employing both manual and electronic machine methods may, at the option of the clerk and after consultation with the court, be used to select names from voter lists of any or all counties in the District.

If the court elects to use electronic machine methods, or combination of manual-machine methods, the selection system shall be planned and programmed to achieve the same results as for a manual selection procedure.

4. MASTER WHEELS

a. A master wheel (or a device similar in function and purpose) shall be maintained for each of the four divisions of the district. The statutory places of holding court in each division are:

at Fargo in the Southeastern Division;
at Grand Forks in the Northeastern Division;
at Minot in the Northwestern Division; and
at Bismarck in the Southwestern Division.

Names from the following counties shall be placed in the master wheel and shall constitute

the:

Southeastern Division			
Barnes	Eddy	LaMoure	Sargent
Cass	Foster	Ransom	Steele
Dickey	Griggs	Richland	Stutsman

Northeastern Division			
Benson	Nelson	Rolette ¹	Walsh
Cavalier	Pembina	Traill	
Grand Forks	Ramsey	Towner	

¹ Amended Order of the U.S. District Court, District of North Dakota, approved by the Eighth Circuit Judicial Council on July 22, 2003, and filed in the United States District Court for the District of North Dakota on July 28, 2003, all civil and criminal cases arising from conduct occurring in Rolette County, North Dakota, shall be assigned to the U.S. District Judge whose place of legal residence is western-most within the District of North Dakota, pursuant to the authority contained in 28 USC 137. Actual trial venue for such cases shall be as determined by the district court.

Northwestern Division			
Bottineau	McHenry	Pierce	Ward
Burke	McKenzie	Renville	Wells
Divide	Mountrail	Sheridan	Williams

Southwestern Division			
Adams	Emmons	Logan	Oliver
Billings	Golden Valley	McIntosh	Sioux
Bowman	Grant	McLean	Slope
Burleigh	Hettinger	Mercer	Stark
Dunn	Kidder	Morton	

- b. The minimum number of names to be placed initially in the master wheel for each of the four divisions shall be 5,000 or one-half of one per cent of the total number of persons on the actual voter lists for the counties respectively designated for each master wheel, whichever is greater.
- c. The judge having control and supervision of the process may order additional names to

be placed in the respective master wheels from time to time as necessary.

d. The master wheels shall be emptied and refilled between January 1 and September 1 of each year following a presidential election.

5. DRAWING FROM MASTER WHEEL; COMPLETION OF QUALIFICATION FORMS

From time to time, as directed by the supervising judge, the clerk shall, in the office of the clerk, publicly draw at random from the appropriate master jury wheel the names of as many persons as may be required for jury service at Fargo, Grand Forks, Minot and Bismarck and shall secure completion of juror qualification forms in the manner specified and as required by the provisions of 28 USC 1864.

At the option of the clerk and after consultation with the court, a properly planned programmed electronic data processing system for pure randomized selection (through routines approved by the National Institute of Standards and Technology) may be used to select names from the master wheel for the purpose of summoning persons to serve as grand or petit jurors. Such random selection of names from the source list must insure that the mathematical odds of any single name being picked are substantially equal.

The clerk may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheels.

Pursuant to 28 USC 1878, at the option of the district court, jurors may be qualified and summoned in a single procedure.

6. GROUPS AND CLASSES EXCUSABLE UPON REQUEST. It is found that jury service by some groups of persons and occupational classes would cause undue hardship or extreme inconvenience to the members of the class. Their excuse from service would not be inconsistent with the

provisions of 28 USC 1861 and 1862. Individual requests for excuse will be granted when claimed by the following groups of persons and occupational classes:

- a. persons over 70 years of age;
- b. persons actively engaged in the provision of emergency health care services;
- c. clergy;
- d. lawyers;
- e. full-time students;
- f. volunteer safety personnel
- g. persons having active care and custody of a child or children if the health or safety of the child or children would be jeopardized by the person's absence for jury service;
- h. persons who are essential to the care of aged or infirm persons;
- I. persons who have served as a grand or petit juror in federal court during the past two years.

7. GROUPS AND CLASSES EXEMPT FROM JURY SERVICE. It is found that the exemption of the following groups of persons and occupational classes is in the public interest and would not be inconsistent with the provisions of 28 USC 1861 and 1862. Members of the following groups of persons and occupational classes shall be barred from jury service on the ground that they are exempt:

- a. members in active service in the Armed Forces of the United States;
- b. members of fire and police departments of any state, district, territory or subdivision thereof;
- c. public officers in the executive, legislative or judicial branches of the Government of the United States, the State of North Dakota, or subdivision thereof, who are actively engaged in the performance of official duties. (Actively engaged will be interpreted as an average minimum of 20 hours per week.)

8. QUALIFICATIONS FOR JURY SERVICE. Determination of qualification for service at the time of placement into the qualified wheels shall be made by the clerk, under the supervision of the Court. Such determination and the required records thereof shall be governed by the provisions of 28 USC 1865. Any person shall be deemed qualified to serve on grand and petit juries in this district unless the person:

- a. is not a citizen of the United States, at least eighteen years of age, who has resided for a period of one year within this judicial district;
- b. is unable to read, write and understand the English language with a degree of proficiency sufficient to complete the juror qualification form;
- c. is unable to speak the English language;
- d. is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- e. has a charge pending for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and whose civil rights have not been restored.

9. QUALIFIED JURY WHEELS; SELECTION, ASSIGNMENT AND SUMMONING OF PETIT AND GRAND JURY PANELS.

a. The clerk shall maintain a qualified jury wheel for each of the places of holding court and shall place in such wheels the names of all persons drawn from the master wheel who are determined to be qualified as jurors and not exempt or excused pursuant to this plan.

b. From time to time as the Court may direct, the clerk shall notify a sufficient number of jurors drawn from the qualified wheel to appear for jury service for trial as set by the Court

c. Grand juries shall be drawn from the entire District but shall be empaneled only at Fargo or Bismarck unless otherwise ordered by the Court.

d. When by order of the Court a grand jury is to be empaneled, the clerk shall draw an

appropriate number of names from the master wheel, apportioning the number drawn from each division according to the proportion that the total of actual voters for all counties represented in each of the four divisions bears to the total of actual voters in the entire state. Questionnaires and summons shall issue to said persons and upon their appearance before the Court, a random drawing from their number shall proceed until a total of 23 members are empaneled as provided by law. The Court may also empanel, in the same manner, not more than six alternate grand jurors to serve in the order in which they are drawn if it becomes necessary to permanently excuse a regular grand juror.

e. The records to be made, the issuance of summons and the service of summons shall be as provided in 28 USC 1866.

f. The disqualification, exclusion, excuse or exemption from jury service after service of summons has been made shall be the responsibility of the clerk, under the supervision of the Court and shall be governed by the provisions of 28 USC 1866(c). Except as provided in 28 USC 1865 and the provisions of this plan, no person or class of persons shall be disqualified, excluded, excused or exempt from service as jurors. However, any person summoned for jury service may be:

(1) excused by the clerk upon a showing of undue hardship or extreme inconvenience for such period as the Court deems necessary at the conclusion of which such person may be summoned again for jury service, or

(2) excluded by the Court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or

(3) excluded upon peremptory challenge as provided by law, or

(4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or

(5) excluded upon determination by the Court that the person's service as a juror would be likely to threaten the secrecy of the proceedings or otherwise adversely affect the integrity of jury deliberations.

g. In the event that an unanticipated shortage of available petit jurors drawn from the

qualified jury wheel occurs, the Court will direct the marshal to summon a sufficient number of petit jurors selected at random from the list of actual voters of the division in which the Court is then sitting. It is determined that this procedure is not inconsistent with 28 USC 1861 and 1862.

h. The respective qualified wheels shall be emptied and refilled in each year when the master wheels are refilled as provided in paragraph 4d of this Plan and as soon thereafter as names drawn from the refilled master wheels can be determined qualified for jury service in numbers sufficient to permit continuous operation of the Court.

10. DISCLOSURE OF NAMES DRAWN FROM QUALIFIED WHEELS.

a. Unless otherwise ordered by the trial judge, the names of petit jurors drawn from the qualified wheels for each place of holding court may be disclosed to parties and to the public after summonses to appear for service have been issued.

b. The names of grand jurors drawn from the master wheel shall not be disclosed to anyone other than the United States Attorney, except upon specific order of the Court.

11. NON-DISCLOSURE OF RECORDS. The contents of records and papers used in connection with the jury selection process, including juror qualification questionnaires, shall not be disclosed except as provided in 28 USC 1867(f) and in this plan. Parties requesting access to these records shall petition the Court in writing setting forth the reasons for requesting access and allowing sufficient time for compliance if said petition is granted.

12. MAINTENANCE OF RECORDS. All records and papers compiled and used in the jury selection process shall be maintained and filed by the clerk, using intervals of time commencing with proceedings to fill the master wheels and ending when all persons selected to serve before the wheels were emptied have completed their service. Said records shall be preserved for four years as required by

28 USC 1868 and shall then be destroyed unless otherwise ordered by the Court.

13. PROTECTION OF EMPLOYMENT RIGHTS. If an employer discharges, threatens to discharge, intimidates or coerces any permanent employee by reason of such employee's jury service or the attendance or scheduled attendance in connection with such service in this court, he shall be considered in violation of the provisions of 28 USC 1875.

14. MODIFICATION. This plan may be modified only in the manner provided for in 28 USC 1863(a) and (c).

15. EFFECTIVE DATE. This plan for jury selection shall be placed in operation after approval by the reviewing panel as provided in 28 USC 1863 as amended by the Jury Selection and Service Act of 1968. Jury service under this plan shall be required upon special order of this court at such time as processing of the juror qualification questionnaires has been completed. This plan shall remain in force and effect until approval of one or more modifications of this plan by said reviewing panel. Modifications of this plan may be initiated by the court and submitted to the reviewing panel for approval; and this plan shall be modified as and when directed by said reviewing panel.

Dated: _____

Daniel L. Hovland, Chief Judge

Dated: _____

Ralph R. Erickson, District Judge